Appendix A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 939—August Term, 1981

(Argued April 19, 1982 Decided May 17, 1982)

Docket No. 81-7890

WILLIE BARNES,

Plaintiff-Appellant,

—v.—

LOUIS SANZO, AMADIO PETITO and DON MAGLIONE, JR., jointly and severally, both in their individual and representative capacities as President, Secretary and Vice-President, respectively of LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA/ BLASTERS, DRILLRUNNERS, and MINERS UNION and LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA/BLASTERS, DRILLRUNNERS, and MINERS UNION,

Defendant-Appellees.

Before:

WATERMAN, FRIENDLY and MESKILL,

Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York, Ward, *J.*, dismissing appellant's complaint which challenged the collection by a union local of certain dues payments.

Affirmed.

BURTON HALL, New York, New York (Hall, Clifton and Schwartz, New York, of counsel), *for Appellant*.

DENNIS CROWLEY, New York, New York (Corcoran and Brady P.C., New York, New York, of counsel), *for Appellees*.

MESKILL, *Circuit Judge*:

Willie Barnes appeals from an order of the United States District Court for the Southern District of New York, Ward, *J.*, dismissing his complaint which challenged the receipt by local 29, Laborers' International Union of North American/Blasters, Drillrunners, and Miners Union ("Union"), of certain dues payments from members. We affirm.

BACKGROUND

In 1972, Union officials increased membership dues by ten cents per hour of employment. Union officials also increased dues by five cents per hour of employment in each of 1975, 1976 and 1977. It is undisputed that because the Union failed to conduct secret ballot

votes of the membership, each of the increases violated section 101 (a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(3)(A) (1976).

On December 31, 1979, Barnes, a Union member who paid the unlawfully increased dues, filed suit seeking injunctive relief, an accounting, and a refund. By pre-trial order, Judge Ward directed that a retroactive ratification vote be taken on each of the challenged increases. The court limited voting on each of the challenged increases to workers who were Union members on the dates that the increases took effect, including members who had since retired. These voting classes approved all of the dues increases, each by slightly less than a two-to-one margin. The court then entered an order dismissing Barnes' complaint and Barnes filed this appeal.

Barnes claims that the votes taken at the district court's direction could not retroactively cure the defects in the illegal dues increases and that the district court's order improperly denied some present Union members the right to vote.

DISCUSSION

1. *The Retroactive Vote*

Barnes first claims that a membership vote approving dues increases cannot be applied retroactively. He argues that if dues increase were improperly implemented, a subsequent, properly conducted ratification vote can apply prospectively only. To support his position, Barnes cites several cases, including *Landry* v. *Sabine Independent Seamen's Association*, 623 F.2d 347, 350 (5th Cir.

1980); *Local No.2, International Brotherhood of Telephone Workers* v. *International Brotherhood of Telephone Workers*, 362 F.2d 891 (1st Cir.), *cert. denied*, 385 U.S. 947 (1966); *White* v. *Local 942, Laborers' International Union*, 90 F.R.D. 368, 373 (D. Alaska 1981); *Gates* v. *Dalton*, 441 F. Supp. 760, 764-65 (E.D.N.Y. 1977) (Neaher, *J.*; *Peck* v. *Associated Food Distributors*, 237 F. Supp. 113, 115 (D. Mass. 1965).

We find Barnes' argument unpersuasive. Each of the cases he cites is distinguishable on the important ground that the ratification vote challenged was initiated by the union without judicial sanction. In this case, the district court, pursuant to section 102 of the LMRDA, 29 U.S.C. § 412, ordered the ratification vote as a remedy for an LMRDA violation. Section 102 provides in pertinent part:

> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United State for such relief (including injunctions) as may be appropria e.

In construing section 102, the Supreme Court has said:

> [Section] 102 was premised upon the fact that Title I litigation necessarily demands that remedies "be tailored to fit facts and circumstances admitting almost infinite variety," and § 102 was therefore cast as a broad mandate to the courts to fashion "appropriate" relief. Indeed, any attempt on the part of Congress to spell out all of the remedies available under § 102 would create the "danger that those [remedies] not listed might be proscribed with the result that the courts would be fettered in their errors to 'grant relief according to the necessities of the

case.' " *Gartner* v. *Soloner*, 384 F.2d 348, 353 (CA3 1967).

Hall v. *Cole*, 412 U.S. 1, 10-11 (1973) (footnote omitted).

In this case, the district court was faced with a suit seeking a refund of dues unlawfully collected over a period of several years. Appellant did not file suit until more than seven years after the Union's first LMRDA violation. The court was careful to ensure that the individuals voting on the retroactive approval of each dues increase were, to the extent possible, the same as those who could have voted when the increases were first implemented. Given the small size of the Union and the amount of money involved, the district court could properly have concluded that ordering a refund of all unlawfully collected dues would be as disadvantageous to the membership as to the Union officials. We believe that the remedy was fair, reasonable and "appropriate" within the meaning of section 102 of the LMRDA.

II. *The right to Vote*

Barnes also contends that even if a retroactive ratification vote can, in some circumstances, be proper, the district court in this case violated the LMRDA by disenfranchising some present Union members. Barnes relies upon the language of section 101(a)(3)(A) of the LMRDA, 29 U.S.C. § 411(a)(3)(A), which provides that union dues shall not be increased except by a majority vote of the "members in good standing." Because the district court limited the class of voters for each of the ratification votes to those who were union members when the unlawful dues increase were originally implemented, Barnes argues that some present "members in good standing" were improperly denied their right to vote.

Once again, we reject Barnes' position. The issue is whether, given the Union's LMRDA violations, the remedy ordered was within the district court's authority. Section 101(a)(3)(A) merely sets forth the procedure a union local must follow to increase dues. It does not limit the district court's authority to design an appropriate remedy for an LMRDA violation. *See* Section 1, *supra*.

We find no error in the district court's exclusion of some present Union members from the voting classes in this case. It was not unreasonable to disallow voting by present Union members who were not members at the time the dues increases took effect.

In sum we find that on the facts of this case the retroactive ratification votes and the designation of voting classes ordered by the district court were fair, reasonable and "appropriate" under section 102 of the LMRDA.

Affirmed.

Appendix B

Order and Judgment of the District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
79 Civ. 7070
(RJW)

WILLIE BARNES
Plaintiff,

— v. —

LOUIS SANZO, AMADIO PETITO and DON MAGLIONE, JR., jointly and severally, both in their individual and representative capacities as President, Secretary and Vice-President, respectively of LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA/BLASTERS, DRILLRUNNERS, and MINERS UNION and LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA/BLASTERS, DRILLRUNNERS, and MINERS UNION,
Defendants.

This cause having been brought on by plaintiff by complaint filed December 31, 1979, and duly served upon the defendants on January 4, 1980, seeking an order granting a preliminary and permanent injunction, enjoining and restraining the defendants and their agents from collecting dues from plaintiff and other members of his class in excess of $56.00 per month, requiring defendants to give plaintiff an accounting of all dues collected since 1972 and indicate how those moneys were spent, directing that all illegally collected dues be refunded to the membership with interest and that attorney's fees and costs be awarded to plaintiff, and

Defendant's answer having been duly served upon plaintiff on January 23, 1980, denying the essential allegations of the complaint, and

This matter having been reassigned to the Honorable Robert J. Ward from the Honorable Lloyd F. MacMahon on February 25, 1980, and

This court having entered a pre-trial order on March 8, 1980, directing a secret-ballot retroactive dues ratification vote to determine whether or not the previously initiated increase in the dues checkoff was properly and freely voted upon, and

This court having established four divisions for class voting based on membership in the union on July 1, 1972, July 1, 1975, July 1, 1976, and July 1, 1977, the date on which the dues increases became effective, and limited to those members, including retired members, affected by the dues increase in each year, and eligible to vote in those elections, and

This court having permitted plaintiff's attorney three to five meetings with members of the Union at important job sites where the officers of the Union and plaintiff's attorney could meet with members and explain the purposes of the election to ratify or reject the dues increases, and

This court having directed one Union meeting to be held at which the question of the dues increases could be presented to the members by plaintiff's attorney, and

Defendants having fully complied with plaintiff's requests for production and copying of documents to the satisfaction of the court, and

Defendants having fully complied with the directives of this court to permit plaintiff's attorney to attend the Union meeting and visit five job sites to present plaintiff's views to the membership of the Union, and

An in-person, secret ballot vote having been scheduled for May 28, 1981, and

The Honest Ballot Association having been retained by the defendant Union as an impartial party to conduct the secret-ballot vote, and

Lists of eligible voters for each division of voters and sample ballots having been supplied to plaintiff's attorney, and

A Notice of Election and letters from plaintiff and defendant explaining respective views on the proposal to be submitted to

the membership having been approved by both parties and duly mailed to each eligible member of the Union, and

The mailing of said notices and letters to each eligible member of the Union having been personally supervised, verified and certified by defendants' attorney to be fairly and accurately completed without prejudice to either party, and

A separate and distinct ballot having been prepared for each year in question, and

A secret in-person vote having been conducted and supervised by the Honest Ballot Association at the Union Hall, located at 137-25 37th Avenue, Flushing, New York, from 6-8 P.M. on Thursday, May 28, 1981, and

A secret mail-in ballot having been mailed to each eligible voter who did not vote in person at the May 28, 1981, meeting on June 21, 1981, by the Honest Ballot Association, pursuant to agreement between the attorneys for both parties, and

The in-person and mail-in ballots having been tallied by the Honest Ballot Association on July 20, 1981, in the presence of the attorneys for both parties, and

The proposal on each ballot submitted to the voters having stated:

> "Whether the supplemental dues increase of $.10, $.05, $.05, $.05 respectively per hour effective July 1, 1972, July 1, 1975, July 1, 1976, July 1, 1977 respectively should be approved retroactively,"

and

The results of the secret ballot vote having been as follows:

(a) 1972	YES-99	NO-55
(b) 1975	YES-100	NO-54
(c) 1976	YES-111	NO-59
(d) 1977	YES-119	NO-60

and

The results of the secret-ballot vote having been certified on July 21, 1981, by Murray Schwartz, President, Honest Ballot Association, that the majority voted to APPROVE the dues increase retroactively effective July 1, 1972, July 1, 1975, July 1, 1976,

and July 1, 1977, respectively, and that the vote was conducted fairly and honestly, and

This court having been satisfied that the secret-ballot in-person and mail-in vote which approved retroactively the supplemental dues increases of $.10, $.05, $.05, $.05, respectively, per hour effective July 1, 1972, July 1, 1975, July 1, 1976, and July 1, 1977, respectively, was conducted fairly and honestly, and decisively expresses the wishes of those members eligible to vote on the respective dues increases, and

The body of voters on each dues increase vote having been the same body of voters eligible to vote on each dues increase when promulgated, and

This court having heard the arguments of counsel for both parties, having reviewed all relevant documents, and being fully advised, it is

ORDERED, ADJUDGED AND DECREED:

that the plaintiff's action is dismissed with prejudice and without costs.

Dated: October 30, 1981

s/ROBERT J. WARD
UNITED STATES DISTRICT JUDGE

Judgment Entered November 2, 1981

s/RAYMOND F. BURGHARDT,
CLERK

Appendix C

Judgment of the Court Below

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventeenth day of May one thousand nine hundred and eighty-two

Present:

HON. STERRY R. WATERMAN
HON. HENRY J. FRIENDLY
HON. THOMAS J. MESKILL
Circuit Judges,

No. 81-7890

WILLIE BARNES
Plaintiff-Appellant,

— v. —

LOUIS SANZO, AMADIO PETITO and DON MAGLIONE, JR., jointly and severally, both in their individual and representative capacities as President, Secretary and Vice-President, respectively of LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be

and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

by ARTHUR HELLER,
Deputy Clerk

Order Denying Petition For Rehearing

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 14th day of July, one thousand nine hundred and eighty-two.

No. 81-7890

WILLIE BARNES
Plaintiff-Appellant,

— v. —

LOUIS SANZO, AMADIO PETITO and DON MAGLIONE, JR., jointly and severally, both in their individual and representative capacities as President, Secretary and Vice-President, respectively of LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA/BLASTERS, DRILLRUNNERS, and MINERS UNION and LOCAL 29 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA/BLASTERS, DRILLRUNNERS, and MINERS UNION,
Defendants-Appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed by counsel for the plaintiff-appellant, Willie Barnes,

Upon consideration by the panel that heard the appeal, it is ORDERED that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. DANIEL FUSARO,
Clerk

by s/ FRANCIS X. GINDHART,
Chief Deputy Clerk